

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)

v.)

TAREK MEHANNA)

No. 09-CR-10017-GAO

**DECLARATION AND CLAIM OF PRIVILEGE
OF THE ATTORNEY GENERAL OF THE UNITED STATES**

I, Eric H. Holder, Jr., hereby declare the following:

1. I am the Attorney General of the United States of America and head of the United States Department of Justice, an Executive Department of the United States. I have official custody of and control over the files and records of the United States Department of Justice. The matters stated herein are based on my knowledge, on consideration of information available to me in my official capacity as Attorney General, on discussions that I have had with other Justice Department officials, and on conclusions I have reached after my review of this information.

2. Under the authority of 50 U.S.C. §§ 1806(f) and 1825(g), I submit this declaration pursuant to the Foreign Intelligence Surveillance Act of 1978 ("FISA"), as amended, in connection with the above-captioned criminal proceeding. I have been advised that the Government presently intends to use information obtained or derived from Foreign Intelligence Surveillance Court ("FISC")-authorized electronic surveillance and physical search in the criminal proceeding against the Defendant. *See* 50 U.S.C. §§ 1806(c) and 1825(d). Accordingly,

the Defendant, by and through his attorney, has filed motions for disclosure and suppression of FISA applications, orders and related documents (hereinafter "Defendant's Motions"). The Government has filed an opposition to the Defendant's Motions, which is titled "Government's Classified Memorandum in Opposition to Defendant Tarek Mehanna's Motions Relating to the Foreign Intelligence Surveillance Act" (hereinafter the "Government's Opposition"). For the reasons set forth in the Government's Opposition, it is necessary to provide this Court with the applications submitted to, and the orders issued by, the FISC, and other related documents (hereinafter collectively referred to as "FISA Materials").

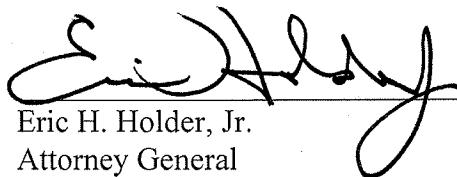
3. Based on the facts and considerations set forth below, I hereby claim that it would harm the national security of the United States to disclose publicly or hold an adversarial hearing with respect to the FISA Materials. The United States is submitting the relevant classified documents to this Court as part of a "Sealed Exhibit" so this Court may conduct an *in camera*, *ex parte* review of the legality of the FISA collection at issue. My Claim of Privilege also extends to the classified portions of any memoranda and briefs the Government may file in connection with this litigation, or any oral representations that may be made by the Government that reference the classified information contained in the FISA Materials.

4. In support of my Claim of Privilege, the United States is submitting to the Court for *in camera*, *ex parte* review the Declaration of Mark Giuliano, Assistant Director, Counterterrorism Division, Federal Bureau of Investigation. Mr. Giuliano's Declaration sets forth, in detail, the specific facts on which my Claim of Privilege is based. The Declaration of Mr. Giuliano is classified at the "TOP SECRET" level.

5. Relying on the facts set forth in Assistant Director Giuliano's Declaration, I certify that the unauthorized disclosure of the FISA Materials that are classified at the "TOP SECRET" level reasonably could be expected to cause exceptionally grave damage to the national security of the United States. I further certify that the unauthorized disclosure of the FISA Materials that are classified at the "SECRET" level reasonably could be expected to cause serious damage to the national security of the United States. The FISA Materials contain sensitive and classified information concerning United States intelligence sources and methods and other information related to efforts of the United States to conduct counterterrorism investigations, including the manner and means by which those investigations are conducted. As a result, the unauthorized disclosure of the information could harm the national security interests of the United States.

6. I respectfully request that the Court treat the contents of the Sealed Exhibit, for security purposes, in the same sensitive manner that the contents were treated in the submission to this Court, and to return the Sealed Exhibit to the Department of Justice upon the disposition of the Defendant's Motions. The Department of Justice will retain the Sealed Exhibit under the seal of the Court subject to any further orders of this Court or other courts of competent jurisdiction.

Pursuant to Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on July 20, 2011.



Eric H. Holder, Jr.
Attorney General